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In the

Supreme Court of the United States

OCTOBER TERM 1968

No. 1011

W. H. PAT O'BRYAN,

Petitioner,

v.

STEPHEN S. CHANDLER,
CHIEF JUDGE OF THE UNITED STATES DISTRICT
COURT FOR THE WESTERN DISTRICT
OF OKLAHOMA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

REAGAN M. MARTIN,
700 United Fidelity Building,
1025 Elm Street,
Dallas, Texas,

HARVEY L. DAVIS,
3315 Daniels Street,
Dallas, Texas 75222,
Attorneys for Petitioner.

THE WARLICK PRESS DIVISION, STECK-WARLICK CO.
P. O. BOX 10543 — 2263 VALDINA STREET — DALLAS — ME 1-3130

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Petitioner prays that a Writ of Certiorari issued to review the Judgment of the United States Court of Appeals for the Tenth Circuit entered in the above entitled case on September 18, 1968.

CITATIONS TO OPINIONS BELOW

The opinion of the Circuit Court of Appeals directing that Petitioner be offered an evidentiary hearing on the

merits is printed in Appendix A hereto, infra p. A-1. The opinion of the Circuit Court of Appeals withdrawing its previous order and opinion and dismissing the appeal is printed in Appendix B hereto, infra p. B-1. The opinion of the District Court dismissing Petitioners cause without a hearing is printed in Appendix C hereto, infra p. C-1.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on September 18, 1968. Petitioner's motion for rehearing was denied on November 5, 1968. The jurisdiction of this court is invoked under 28 U.S.C., Sec. 1254 (1).

QUESTIONS PRESENTED

1. Petitioner filed notice of appeal within sixty days from the date of a final order in a Federal District Court. One question is whether a Federal District Judge is a "party" within the meaning of Rule 73(a) Fed. R. C. Proc. (now Rule 4, Fed. Appellate R. C. Proc.) when such judge opposed by filed pleadings the applications for writs of mandamus; opposed by filed pleadings the granting of writs of mandamus ordering a hearing on the judge's summary disbarment of attorney and opposed by filed pleadings the appeal from a District Court order denying a hearing to the attorney, contrary to the intent and purpose of the writ of mandamus order.

2. The Federal District Judge to whom the writ of mandamus was directed failed to carry out the purpose of the writ. A Second Question is whether the appeal from

the District Judge's failure to comply with the writ of mandamus is a continuation of the mandamus action so as to make the notice of appeal timely.

3. A third question is whether the appeal from an order refusing to grant a summarily disbarred attorney a hearing should be treated as a mandamus action since mandamus is the appropriate remedy to reinstate an attorney who is disbarred without a hearing.

STATEMENT

This statement shows the torturous legal trail Petitioner O'Bryan, for over a period of more than 10 years, has traveled in his efforts to get a hearing on his summary disbarment by Respondent, Judge Chandler, to practice law. The legal trail has become a legal morass because of the tactics used by Judge Chandler to prevent Petitioner from getting a meanful hearing to test the validity of Judge Chandler's summary disbarment order.

By way of preliminary explanation, this petition is directed to No. 8576 and No. 9563 in the Tenth Circuit Court of Appeals because the substance and subject matter filed under these two numbers are one and the same. The substance and subject matter is that of a single and continuous writ of mandamus action. The mandamus action seemed to be the only apparent means by which O'Bryan could possibly overcome the barriers created by Judge Chandler to prevent a review of his actions. The Transcript of Record of No. 8776 (20 pages) will be referred to as Tr.(a). The

Transcript of Record of No. 9563 (17 pages) will be referred to as "Tr.(b)". The mandamus action first began in 1963 as No. 7400 in the Tenth Circuit which appears in the original record on appeal and is incorporated in O'Bryan's Application For Writ of Mandamus in No. 8576 (Tr.(a) p. 3).

O'Bryan was admitted to practice law by the Supreme Court of the State of Oklahoma on January 21, 1936, and was subsequently admitted to practice before numerous other courts, including the Supreme Court of the United States and the Department of the Treasury.

Judge Chandler, caused an order to be entered in the records of the district court clerk for the Western District of Oklahoma reading as follows:

> "It appearing to the Court that W. H. (Pat) O'Bryan has been guilty of gross misconduct in carrying on his practice before this court, it is hereby ordered that the name of W. H. (Pat) O'Bryan be, and hereby is, barred from further practice before this Court."
>
> "Dated this tenth day of November, 1958."

The order bears a printed file mark purporting to record the date of filing, but the year "1958" is written in ink. (R-1) (Tr.(a) 3, Exhibit A) Petitioner has compelling evidence that the order was not filed until about February 1961.

The order was entered, signed and filed without notice to O'Bryan. A copy of the order was never served upon him. It was entered summarily without a hearing being

afforded to O'Bryan. O'Bryan did not even learn of the order until 1961. (R-2-5)

Unable to get a hearing on the validity of the order in the United States District Court for the Western District of Oklahoma, O'Bryan on July 19, 1963, applied for a Writ of Mandamus to the Tenth Circuit (Cause No. 7400), asking the Court to assume original jurisdiction, to issue a Writ of Mandamus declaring the disbarment order void and to expunge it for the records. On September 13, 1963, the Court handed down an order reading the part as follows:

> "The application to file a petition for mandamus is denied. Although petitioner a lawyer, alleges that he has been disbarred by an order of the District Court for the Western District of Oklahoma, entered summarily, and without a hearing, a procedure prohibited under the principal set forth in Theard v. United States, 354 U.S. 278; 77 S. Ct. 1274, it is apparent that full relief is available to petitioner for redress of any such void judgment by the customary procedures originating at the trial level." (TR.(a) 3 p. 2)

O'Bryan then filed in the District Court for the Western District of Oklahoma a motion to vacate the void order and have it expunged from the record. (Case No. Misc. 7) In the motion, O'Bryan alleged that on November 10, 1958 Judge Chandler summarily, without due process of law and in violation of rules of the court barred O'Bryan from further practice before the court; that an oral order was apparently made by Judge Chandler at the time but no written order was filed. Subsequently at a date unknown to O'Bryan but believed to be in February 1961, a written order, bearing the date of November 10, 1958, and

purportedly filed with the clerk of the Court on that date materialized in the records. The clerk of the District Court, who purportedly filed the written order testified in another matter on March 2, 1959, that no written order had been filed as of March 2, 1959, relating to the O'Bryan disbarment.

Judge Chandler refused to act upon O'Bryan's motion. On October 8, 1963, O'Bryan requested Judge Chandler to disqualify himself as the judge to hear the motion to vacate. For more than two years thereafter Judge Chandler refused to either act on the motion or to disqualify himself.

O'Bryan then filed a renewed of his application for writ of mandamus (Cause No. 8576) on the grounds that his constitutional right to a hearing on his disbarment continued to be flagrantly violated; that further pursuit of the matter at the trial level was utterly futile; requesting that a writ of mandamus be issued requiring Judge Chandler to expunge the void order from the records, and for such other relief as may be deemed proper and necessary to meet the responsive demands of justice. (Tr.(a) 3)

Judge Chandler filed an Answer to Application for Writ of Mandamus. In it he referred to a law suit brought by O'Bryan against Chandler and claimed O'Bryan's Application for Writ was a "continuation of concerted harassment" of Respondent by O'Bryan. (Tr.(a) 4) Chandler followed this up with a Supplemental Answer To Application For Writ of Mandamus with attached Exhibits A & B contain-

ing copies of the papers filed the lawsuit filed by O'Bryan against Judge Chandler for publishing libelous statement that O'Bryan was an accomplice if not the master mind in the bribery of the Supreme Court of Oklahoma. (Tr.(a) 8)

Judge Chandler also referred the Court to his "Official Statement" concerning his disbarment of O'Bryan. This Honorable Court is asked to take judicial notice that this so-called "Official Statement" is the basis of O'Bryans libel action; that Federal District Judge Richard Austin found in a removal trial that Judge Chandler was not acting in a judicial capacity when he published the "Official Statement" and the "Official Statement" has been held to libelous by an Oklahoma State Court after a week's trial on the merits before a jury.

This Honorable Court is also asked to take judicial notice that Judge Chandler, on February 26, 1967 after judgment was entered against him in the libel action, removed the case for the second time to a Federal District Court. Although the second removal action has no validity and should be remanded the case has now remained in the Federal District Court for almost 2 years. The Court is referred to the record in *W. H. Pat O'Bryan v. Stephen S. Chandler*, No. 1517 Misc. Motion for leave to filed petition for mandamus and/or prohibition denied 388 U.S. 904 (1967).

The Court of Appeals by order issued October 11, 1966 found: "It is patently clear that the respondent, Judge

Chandler, should be and is disqualified from hearing any matter pertaining to the designated order of disbarment." The order granted O'Bryan's application for general relief "sufficient to meet the demands of justice" and referred for assignment or other disposition to the judge of the Western District of Oklahoma next senior to Judge Chandler all motions or other matters filed and pertaining to the order. (Tr.(a) 10)

Judge Chandler filed a 7 page Motion For Rehearing in which he complained of the order disqualifying him from hearing any matter pertaining to the order of disbarment, accused the Court of Appeals of deep rooted intemperate and blind prejudice against Chandler and of being guilty of gross libel against him. (Tr.(a) 12) His Motion For Rehearing was dismissed. (Tr.(a) 13)

No action was taken on the order of October 11, 1966 by the next senior judge (Judge Luther Bohanon) until prompted by a letter from O'Bryan's counsel on November 17, 1966, pointing out the need to obtain a hearing date on the matter. In reply, Judge Bohanon advised that he was disqualified. He was requested to certify his disqualification and refer the case to another judge for immediate setting of a hearing. On December 13, 1966 Judge Bohanon filed his declaration that he was "disqualified from hearing any of these proceedings." O'Bryan's counsel next wrote a letter (December 22, 1966) to the remaining federal judges of the Western District pointing out that the case was in need of being heard and asking that a decision be reached at an early possible date. Judge Bohanon by order dated

July 15, 1967, assigned the matter to Judge Edwin Langley, Chief Judge of the United States District Court for the Eastern District of Oklahoma. (R. 8)

Instead of granting a hearing on the merits in this matter, Judge Langley on January 25, 1967, issued to O'Bryan an "Order for Further Statement." (R. 9) (Also printed in Appendix D, infra)

Mr. O'Bryan in compliance with the order, filed on February 3, 1967, a "Further Statement," prefaced with an objection to this order of proceedings. O'Bryan's transmittal letter requested Judge Langley to "afford an opportunity for full presentation of evidence and argument." (R. 13, 47)

On March 20, 1967, Judge Langley, without a hearing or opportunity for argument, entered an order dismissing O'Bryan's application. Judge Langley asserted: "No useful purpose could be served in setting this matter for a hearing." (R. 48) Judge Langley relied on the "Official Statement" of Judge Chandler referred to supra, p. 7. This Honorable Court is asked to take judicial notice that this is the "Official Statement" that has been found to be libelous after a week long trial before a jury during which trial Judge Chandler under oath admitted contained untruthful statements. A jury verdict for actual and exemplary damages totaling $50,000 against Judge Chandler.

O'Bryan on April 10, 1967, filed a Motion to Set Aside Order and Motion for Hearing on the Merits. (R. 52) Said Motions were denied April 12, 1967. (R. 60)

Petitioner filed notice of appeal June 5, 1967. (R. 61)

When O'Bryan's application was dismissed without a hearing or argument, he filed a motion in the Court of Appeals asking that Court to specify that its order of October 11, 1966 meant and required that O'Bryan be afforded a hearing on the merits (Tr.(a) 14) Judge Chandler filed a "Response To Motion To Specify" consisting of 24 legal size pages including the exhibits he attached. Judge Chandler claimed O'Bryan's motion was a "back-door" attempt to obtain a review of Judge Langley's Order of dismissal and an "unethical" effort to harass Judge Chandler. (Tr. .....)

O'Bryan also filed in the Court of Appeals a motion to hold the appeal from Judge Langley's order of dismissal in abeyance on the basis that if the Court of Appeals specified that its order of October 11, 1966 required that O'Bryan be afforded a hearing then the question involved in the appeal would be rendered moot. (Tr.(b) 15)

O'Bryan's Motion To Specify, etc. was denied on August 8, 1967. (Tr.(a) 15)

O'Bryan's appeal in No. 9563 was titled "W. H. Pat O'Bryan v. Stephen S. Chandler" when argued and submitted to the Court, (Tr.(a) 5) and when the Court of Appeals by per curiam opinion on December 29, 1967, set aside Judge Langley's order and remanded the cause with directions to afford O'Bryan "an evidentiary hearing on the merits of the controversy and thereafter for the court to make appropriate findings of fact and conclusions of law". The Court also expressly stated that its order "does not

supersede this Courts order of October 11, 1966, but is a supplement thereto." (Tr.(b) p. 4) Earlier in the Courts order it said: "The very nature of appellant's contention clearly shows he is entitled to a hearing. This, we thought was inherent in our order of October 11, 1966, but it was not so interpreted. (Tr.(b) 5, p. 3)

Judge Chandler on January 11, 1968, in response to this order filed "Motion To Clarify" in both No. 8576 and No. 9563. This "Motion To Clarify" was 14 legal size pages long with 28 pages of attached exhibits. (Tr.(a) 8) and (Tr.(b) 16) In his Motion to Clarify he stated he was filing it as a United States District Judge and the motion was equally applicable to No. 8576 and No. 9563. He defended Judge Langley's action; he again accused O'Bryan of fraud "perpetrated on the court in open court"; accused O'Bryan of "groundless" harassment. Judge Chandler again accused the Court of Appeals of prejudice and animosity against him. His "Motion To Clarify" was denied February 12, 1968. (Tr.(a) 17)

However, the Court of Appeals on April 24, 1968, entered an order in which it deemed Judge Chandler's "Motion to Clarify" which it had previously denied, as a timely filed Petition for Rehearing; granted the Motion For Rehearing of the Appeal; ordered the clerk to notify each of the Judges of the Western District of Oklahoma of such action and to notify any parties having an interest therein to file briefs in support of the order appealed from (Judge Langley's order of dismissal) and that the appeal would

then be set down for a hearing both on the merits of the case and upon the question of the timeliness of the notice of appeal. (Tr.(b) 9)

O'Bryan was granted leave to file documents supplied by the United States Treasury Department showing the investigation made concerning a Complaint and Statement of Charges against O'Bryan who is an enrolled attorney entitled to practice before the Treasury Department (Tr.(b) 11) The 13 page "Examiners Findings or Decision On Motion To Dismiss" is an excellent summary of the facts surrounding O'Bryan's disbarment and all pertinant related matters. It found Judge Chandler's proceeding invalid and the Oklahoma Supreme Court's finding based on Chandler's "evidence" likewise invalid. The Motion To Dismiss was granted by the examiner for the Treasury Department. (Tr.(b) 11)

The Court of Appeals on September 18, 1968, handed down an opinion in which it discussed the question of whether the notice of appeal was required to be filed within 30 days or within 60 days in any action in which the United States or any officer or agent thereof is a party under Rule 73(a), F. R. Civ. P. now Rule 4, F. R. Appellate P. The Court held that the 30 day rule applied to this case; withdrew its order of December 29, 1967 and dismissed the appeal for lack of jurisdiction. (Tr.(b) 12)

O'Bryan's Motion For Rehearing was denied November 5, 1968.

REASONS FOR GRANTING THE WRIT

I. The Writ Should Be Granted Because The Denial Of O'Bryan's Fundamental Right of Due Process Was Based On The Technical Point That Judge Chandler Was Not A "Party" To The Action; Yet Judge Chandler, Acting In His Capacity As A Federal Officer Has Opposed By Filed Legal Papers The Proceedings In The Courts At All Times And At All Stages.

The Statement listing the petitions, answers, responses, motions, petitions for rehearing and exhibits filed by Judge Chandler at every stage and level of O'Bryan's attempt to get a hearing that would afford O'Bryan due process proves that Judge Chandler is a "party" to this action. In all of the legal papers filed by Judge Chandler he has acted in his capacity as a Federal District Judge. He acted as a United States officer or agent within the meaning of Rule 73(a), Fed. R. Civ. Proc. (now Rule 4, Fed. R. Appellate Proc.) The Court of Appeals was in error in dismissing O'Bryan's cause for lack of jurisdiction because O'Bryan filed notice of appeal 57 days after the District Court's final order. Rule 73(a) gave O'Bryan 60 days to file notice of appeal because Judge Chandler was a party to the action. O'Bryan should not be denied due process upon what is purely a technical point under the circumstances shown by this record, namely that O'Bryan's application did not designate Judge Chandler as a "party". Judge Chandler, by his own actions made himself the actual opposing party from the outset and he has never deviated from that role.

Counsel for O'Bryan have some realization of the difficulty that this Honorable Court will have in accepting the state-

ments that have been made and must be made by Counsel about Judge Chandler's "Official Statement". Counsel have the highest respect for the judicial office which Judge Chandler holds. Counsel also feel and know the great obligations they bear as members of the bar and as officers of the Court. It is very difficult to believe, perhaps impossible to believe, unless observed personally, the extent to which Judge Chandler has abused and desecrated the power and dignity of his high office. It may be difficult to believe, by reading the cold print of this Petition, that Judge Chandler admitted under oath before a judge and a jury that he had no facts to support his libelous assertion in his "Official Statement" that concerning the bribery of Justice Corn of the Supreme Court of Oklahoma: "Beyond any Reasonable Doubt that O'Bryan was an Accomplice if not the Master Mind." The exact words used and published by Judge Chandler on this matter in his "Official Statement" are as follows:

> "The Court (Judge Chandler) furnished Potter (United States Attorney for the Western District of Oklahoma) additional concrete evidence in October and early November 1961. He wrote POTTER on November 10, 1961, the morning of the day O'BRYAN was indicted, sent the letter by hand, giving him ADDITIONAL CONCRETE FACTS, INDISPUTABLE PHOTOSTATIC EVIDENCE supporting that in his file regarding the $150,000 bribe paid to Justice CORN, which disclosed BEYOND ANY REASONABLE DOUBT that O'BRYAN was an ACCOMPLICE, if not the MASTER MIND." (Page 18, "Official Statement" of Judge Chandler)

(Copies of pages 17 and 18 of the "Official Statement" are attached to Exhibit "A" to Petitioner's Motion For Leave To File Petition For Mandamus and Prohibition, Misc.

1517, which was denied 388 U.S. 904 (1967) and also are found in Tr.(b) 8 as one of the exhibits thereto.)

The admission by Judge Chandler is a matter of record in the Oklahoma State Court trial. The admission and the trial facts developed on the method by which Judge Chandler published his "Official Statement" were primary factors in the verdict and judgment that Judge Chandler's acts of publishing libelous statements about O'Bryan were not done in a judicial capacity, nor in the course of judicial proceedings; that the acts were not privileged and that Judge Chandler did not establish the defense of truth. The jury found that O'Bryan was damaged in the amount of $40,000 and that Judge Chandler should pay an additional $10,000 as exemplary damages because his acts were with malice.

Those State proceedings have now hung in limbo for almost two years because of Judge Chandler's second removal to a Federal District Court followed, by the filing of many legal documents to prevent remand to the State Courts. The documents filed on behalf of Judge Chandler contain repetitious arguments that everything he has done in all of the porceedings were done as a federal judge; were done under the judicial immunities of a federal judge and that Federal District Judge Richard B. Austin and State of Oklahoma Judge Lavern Fishel were wrong when they held otherwise. The decisions of these judges were made after hearing the witnesses in trials on the merits.

"The voice is Jacob's voice, but the hands are the hands of Esau." The voice dismissing O'Bryan's application was

Judge Langley's, but the hands furnishing the "facts" were the hands of Judge Chandler. Among the "facts" relied upon by Judge Langley were those concocted by Judge Chandler in his "Official Statement." Judge Langley's "Order for Further Statement," Appendix D, infra, makes a six paragraph summary of "facts" taken from the "Official Statement of Judge Chandler." These same "facts" are summarized in Judge Langley's Order dismissing O'Bryan's action (Appendix C-1, 2, infra). These "facts" came from the Statement of Judge Chandler and form the basis of Judge Langley's order. *Judge Chandler was a party to the action* through his *ex parte*, unsworn Statement containing assertions, fabrications, and unsupported conclusions. He did not appear in person but *his handiwork is quite evident in this record.*

Pyramid Motor Freight Corp. v. Ispass, 330 U.S. 695 (1947) held that it is within the sound discretion of the Court of Appeals to consider Rule 73(a) in connection with all other circumstances before it to determine if there is good reason to excuse the delay. There the Court of Appeals refused to dismiss the appeal because the appeal presented a substantial question as to the correctness of the judgment. In the case at bar there is more than a substantial question as to the correctness of Judge Langley's judgment of dismissal: there are questions of denial of fundamental due process as prescribed by this Court, and there is the question of Judge Chandler's continuous involvement, overt and covert, in these proceedings to prevent O'Bryan from obtaining due process.

II. The Writ Should Be Granted Because The 30 Day Notice Of Appeal Requirement Should Not Apply To O'Bryan's Appeal From Order Of Dismissal Which Order Was Contrary To The Purpose Of The Writ Of Mandamus.

O'Bryan's position under this argument is that when Judge Langley failed to carry out the purpose of the writ of mandamus under which he acted, O'Bryan's appeal was in the nature of a continuation of the mandamus action. His position also is that Judge Langley technically became a party to the proceedings.

A. A Writ of Mandamus to a Federal District Judge Makes the Judge a Party in the Action.

LaBuy v. Howes Leather Company, 352 U.S. 249 (1957) upheld the Court of Appeals' mandamus to compel the district judge to vacate a certain order. The opinion clearly indicates that a mandamus action is an action involving the judge or the office of the judge. The court stated, "It is true that mandamus should be resorted to only in extreme cases, since it places trial judges in the anomalous position of being *litigants* without counsel other than uncompensated volunteers." (Emphasis added)

Ex Parte Kumezo Kawato, 317 U.S. 69 (1942) held that mandamus is the appropriate remedy to correct an erroneous order of abatement of an action and to order the trial court to proceed to trial.

B. Both Judge Chandler and Judge Langley were Parties Under the Directive Order of the Court of Appeals' Writ of Mandamus.

In the usual case when a federal district judge dismisses an action without a hearing the judge is not a party within the meaning of Rule 73(a) F. R. Civ. P. But this case is far from a usual case. The office of the judge or the judge to whom this case was assigned was under the Court's mandamus order to grant to O'Bryan the relief that had been denied him since 1958. Judge Chandler was disqualified. The mandamus order of October 11, 1966, was directed to a federal district judge. Its purpose was to grant O'Bryan a hearing. Judge Langley failed to carry out the mandamus directive. Regardless of the reasons for Judge Langley's failure to obey the Court's order, the effect is the same as Judge Chandler's refusal to act. O'Bryan for ten years has been denid the relief to which this Honorable Court agrees he is entitled. Judge Langley was made a party to this case when the case came to him under the same mandamus directive that disqualified Judge Chandler because Judge Chandler refused to perform his obligation as a federal judge.

There is no doubt that Judge Chandler is a party to the mandamus directive. He even admits to his. There is no doubt that the mandamus order, by disqualifying him, produced effective legal consequences upon Judge Chandler as a "party". The mandamus directive had the legal effect of transferring from Judge Chandler to Judge Langley the obligation to grant O'Bryan a hearing. If it were Judge

Chandler who had denied the hearing in the manner Judge Langley has done, there would be no doubt that Judge Chandler would be a "party" in the action. Judge Langley is in the exact position as was Judge Chandler under the mandamus order. Judge Langley is either a "party" within the 60-day period for notice of appeal or he is a federal district judge who has failed to perform the obligation placed upon him by the Court's mandamus order. If he is in the latter position the time of notice of appeal is not relevant. The Court of Appeals' should reissue its mandamus order to Judge Langley.

The fact that the cause has now come to be numbered 9563 instead of 8576, under which the mandamus order was issued, does not change the substantive nature of the cause. It has been the identical cause throughout the years. The new number 9563 was a clerical assignment. It could well have been continued under the original number 8576.

III. This Writ Should Be Granted Because The 30 Day Notice Of Appeal Requirement Does Not Apply To These Proceedings Since Mandamus Is The Proper Remedy For An Attorney Disbarred Without A Hearing.

Another legal basis for O'Bryan's position is the law laid down by the Supreme Court long ago that the writ of mandamus is the appropriate remedy to correct the abuses of the district courts in summary proceedings against attorneys practicing in those courts. *Ex Parte Bradly*, 74 U.S. 364 (1869). In *Ex Parte Robinson, Appellant*, 86 U.S. 513, 19 Wall 513, 22 L. Ed. 205 (1874), the Supreme Court held

that neither an appeal nor a writ of error will lie from an order of the District Court disbarring an attorney. The Court then went on to hold in *Ex Parte Robinson, Petitioner*, 86 U.S. 505, 19 Wall 505, 22 L. Ed. 205 (1874), that mandamus was the proper remedy to reinstate an attorney who was disbarred without a hearing.

Gladstein v. McLaughlin, 230 F. 2d 762 (9th Cir. 1955) held that a writ of mandamus was the proper remedy to disqualify a district judge on the ground that the judge was without jurisdiction to hear disbarment proceedings against an attorney because of personal bias and prejudice.

The Supreme Court in *Ex Parte Robinson*, 86 U.S. 505, supra, said:

> "They [attorneys] become, by such admission, officers of the court and, as said in *Ex Parte Garland*, Wall., 378, 18 L. Ed. 370, 'They hold their office during good behavior, and can only be deprived of it for misconduct ascertained and declared by the judgment of the court after opportunity to be heard has been afforded.' Before a judgment disbarring an attorney is rendered, he should have notice of the grounds of complaint against him and ample opportunity of explanation and defense. This is a rule of natural justice and should be equally followed when proceedings are taken to deprive him of his rights to practice his profession, as when they are taken to reach his real or personal property. And such has been the general, if not the uniform, practice of the courts of this country and of England. There may be cases, undoubtedly, of such gross and outrageous conduct in open court on the part of the attorney, as to justify very summary proceedings for his suspension or removal from office; *but even then he should be heard before he is condemned. Ex parte Heyfron*, 7 How. (Miss.) 127; *People v. Turner*, 1 Cal.

148; *Fletcher v. Daingerfield*, 20 Cal., 430; *Beene v. State*, 22 Ark., 157; *Ex parte Bradley*, 7 Wall., 364, 19 L. Ed. 214; *Bradley v. Fisher*, 13 Wall., 354, 20 L. Ed. 65. The principle that there *must be citation before hearing, and hearing or opportunity of being heard before judgment*, is essential to the security of all private rights. Without its observance no one would be safe from oppression wherever power may be lodged.

That *mandamus* is the appropriate remedy in a case like this to restore an attorney disbarred, where the court below has exceeded its jurisdiction in the matter, was decided in *Ex parte Bradley, supra.*" (Emphasis supplied)

One of the basic reasons for the existence and the exercise of the power of mandamus is to aid and protect the jurisdiction of the Court of Appeals, 28 U.S.C. Sec. 1651. See *Roche v. Evaporated Milk Ass'n.*, 319 U.S. 21 (1943).

The Court of Appeals exercised its power of mandamus to protect its jurisdiction when it issued its order of October 11, 1966, granted O'Bryan's application for general relief and assigned the case to the judge of the Western District of Oklahoma, next senior to Respondent Chandler. This became necessary because that Court's jurisdiction has been long thwarted by Judge Chandler's refusal to act. This situation has continued because of Judge Langley's failure to carry out the mandamus order that O'Bryan be given a hearing.

An additional basis for the position that Judge Langley is a "party" and under the obligation of the mandamus order is seen from the following record facts: After Judge Langley denied O'Bryan a hearing, O'Bryan filed under

No. 8576, a "Motion To Specify That The Order On Writ Of Mandamus Requires That Petitioner Be Afforded A Hearing On The Merits Of His Case." O'Bryan also filed under No. 9563 a "Motion to Hold Appeal In Abeyance." These motions were consistent with the apparent purpose of the mandamus order. Although these motions were denied, the Court of Appeals affirmed the purpose of its mandamus order when it entered its order of December 29, 1967, saying:

> "The very nature of appellant's contentions clearly shows he is entitled to a hearing. This, we thought was inherent in our order of October 11, 1966, but it was not so interpreted."

IV. The Writ Should Be Granted Because For More Than 10 Years Pat O'Bryan Has Borne The Stigma Of A Disbarred Lawyer And For More Than 10 Years Has Been Denied His Fundamental Right To A Hearing On The Merits Of His Disbarment.

A. The District Court Erred In Summarily Dismissing O'Bryan's Action Without a Hearing.

More than ten long years have elapsed since Judge Stephen S. Chandler summarily and unilaterally entered his *ex parte* order disbarring W. H. (Pat) O'Bryan from the practice of law. The judge took this unilateral action without notice to O'Bryan. He entered the disbarment order without granting O'Bryan a hearing. He alone stripped Pat O'Bryan of his good reputation and denied to O'Bryan one of the most fundamental and absolute rights granted to citizens by the due process clause of the Constitution: the right to be heard before the reaching of a judgment.

This Court has from the earliest date held that a judgment without opportunity to be heard is judicial oppression. *Dartmouth College v. Woodward*, 4 Wheat 518, 581 (1819); *Galpin v. Page*, 18 Wall. 350, 368 (1873). The truth of this fundamental proposition is proved in the case at bar. The Statement summarizes in cold type the tortuous trail appellant has hacked in the legal jungle created by the initial unconstitutional disbarment. The legal jungle has been nurtured by the continued denials to O'Bryan his right to a trial forum to listen; weigh the evidence and arguments and then pass judgment on the merits. The jungle has been so nurtured that it is now a legal monstrosity.

For more than ten years O'Bryan has attempted by every conceivable legal means to obtain a meaningful judicial trial hearing. This sorrowful saga has been at great financial and emotional cost. The emotional cost has been the greatest, for O'Bryan trained in the great traditions of the law and a respected member of the bar for many years, understands better than most that under cover of the judicial mantle, he has been unconstitutionally deprived of precious personal rights and privileges. For a brief period he believed he was finally to get a hearing on the merits. The Court of Appeals so ordered. But he was denied the hearing. The Court of Appeals then again directed that he be given a hearing. This time it seemed there could be no further obstacle to prevent a hearing on the merits. But the hands of Esau were at work.

It has long been taken for granted by courts that the due process clause guarantee of hearing before decision includes hearing upon questions of law as well as upon questions of fact. There has been no need for litigants to obtain rulings in support of the right of hearing on questions of law when opportunity to be heard on such questions has not been denied. *Darthmouth College v. Woodward*, 4 Wheat. 518, 581 (1819); *Galpin v. Page*, 18 Wall. 350, 368 (1873) are authority for the fundamental proposition that an essential element of due process is an opportunity to be heard before the reaching of a judgment and that a judgment without opportunity to be heard is judicial oppression.

The due process guarantee of a hearing includes an opportunity for argument. *Londoner v. Denver*, 210 U.S. 373 (1908), *Morgan v. United States*, 304 U.S. 1 (1938).

The word "hearing" includes "oral argument." Many cases have so specifically held. *Miller v. Tobin*, 18 F. 609, 616; *Joseph D. G. Company v. Hect*, 120 F. 760, 763. The court below denied even the rudimentary right to oral argument. The concept of the right of a person to be heard by himself or counsel when his property or his personal rights are questioned was so early and firmly embedded into the groundwork of our jurisprudence that it is difficult to find instances where it has been denied, even in quasi-judicial proceedings. The importance and value of such rights is considerable in nearly every case. It is the duty and obligation of counsel to marshall the facts proven to point out their relative importance and to interpret them in the light

of the law applicable thereto. When this is properly done, the judicial mind is enlightened and is in condition to decide the question presented with full knowledge of the facts and the law involved. No opportunity has been afforded O'Bryan to so enlighten the judicial mind of the trial judges who have been assigned to this case.

The due process guarantee of hearing in our system of law has always been recognized as a right in persons, not a privilege to be extended to persons according to the *ex parte* judgment of tribunals as to whether or not there should be a hearing. It is a personal right of access to the courts; a right at the minimum to present one's claim of injury and to be heard to argue in support of the proposition that the allegations thereof, assuming their truth, are legally cognizable and state a "cause of action." This right of hearing accorded by the due process clause is one of the few rights guaranteed by our constitution which is substantially absolute. This right of hearing stems from the Magna Charta in the words:

> "No freeman shall be arrested, or detained in prison, or deprived of his freehold, or outlawed, or banished, or in any way molested, and we will not set forth against him, nor send against him, unless by the lawful judgment of his peers and by the law of the land."

The right is based upon the recognition of the fact that soundness of decision is promoted by hearings, that tribunals are fallible and need, in order to administer justice according to law, the aid of argument on questions of law and on the meaning of the evidence if the trial of fact issues is reached.

Mr. Justice Brandeis stated in *Myers v. Bethlehem Shipping Corporation*, 303 U.S. 41 (1938) at page 51 and 52:

> "* * * Law suits * * * often prove to have been groundless; but no way has been discovered of relieving a defendant from the necessity of a trial to establish the fact."

No way has been discovered of relieving a tribunal and defendant from the necessity of a hearing in which the complainant shall be given opportunity to try to convince the tribunal by argument that the complaint or petition as drawn is not groundless in law. Under our system of law one is not to be turned out of court on an *ex parte* decision that a claim is not legally cognizable and that one cannot even be heard to argue that it is. But that is exactly what occurred in the court below.

Due process of law guarantees a hearing on questions of law and fact. Due process means a *right* in persons, not a mere privilege to be extended to persons by tribunals, according to their *ex parte* judgment as to whether a hearing should be had. *In re Galvins Estate*, 274 N.Y.S. 846. The *ex parte* action of the court below on its face is a denial of due process.

In *Armstrong v. Manzo*, 380 U.S. 545, 14 L. Ed. 2d 62, 85 S. Ct. 1187 (1965), the question raised was whether the failure to notify the father of the pendency of adoption proceedings deprived him of due process of law so as to render the adoption decree constitutionally invalid and whether the subsequent hearing on the petitioner's motion to set aside the decree served to cure its constitutional

invalidity. The court held that the subsequent hearing under the circumstances created by the unlawful entry of the adoption decree did not afford the father due process because that opportunity under the circumstances was not appropriate.

The Court held that the due process clause words

> "* * * require that deprivation of life, liberty, or property by adjudication be preceded by notice and opportunity for hearing appropriate to the nature of the case." Citing *Mullane v. Central Hanover Trust Company*, 339 U.S. 306, at 313.
>
> "An elementary and fundamental requirement of due process in any proceedings which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. *Milliken v. Meyer*, 311 U.S. 457; *Grannis v. Ordean*, 234 U.S. 385; *Priest v. Las Vegas*, 232 U.S. 604; *Roller v. Holly*, 176 U.S. 398 * * *"

The Court rejected the argument that the failure to give the father notice was cured by the subsequent hearing afforded him on his motion to set aside the decree. The Court said that if the father had been given timely notice the moving parties would have the burden of proving their case as against whatever defenses the father might have interposed, but instead the father was faced on his first appearance in the courtroom with the task of overcoming an adverse decree entered by one judge based on a finding of nonsupport made by another judge. The burden of proof may be decisive of the outcome. *Speiser v. Randall*, 356 U.S. 513. The Court said at page 552: "A fundamental

requirement of due process is 'the opportunity to be heard.' *Grannis v. Ordean*, 234 U. W. 385, 394, 58 L. Ed. 1363, 1369, 34 S. Ct. 779. It is an opportunity *which must be granted at a meaningful time and in a meaningful manner.* * * *" (emphasis supplied)

There has never been a hearing afforded Pat O'Bryan's case either at a meaningful time or in a meaningful manner.

B. The District Court Erred in Summarily Dismissing O'Bryan's Action Without Hearing and Basing Its Decision Upon Unsworn Ex Parte Assertions of Judge Chandler and Upon Forged or Altered Court Records.

The District Court accepted as a basis for its denial of a hearing the unsworn, *ex parte* statements of Judge Chandler, one of the parties to the action. This procedure does not comply with procedural due process. It does not afford an impartial hearing to each party. The District Court has relied upon the unverified statement of Judge Chandler from whom the case was removed; a statement that contains only the statements, assertions, fabrications and opinions that Judge Chandler freely chooses to place therein.

The District Court, without a hearing, accepted as true that on November 10, 1958, an order was entered, signed by all the judges of the District Court for the Western District of Oklahoma, on that date, striking the name of Petitioner from the roll of attorneys; that appropriate entries were made on the various pertinent documents and

that no appeal was taken from this purported order of November 10, 1958.

However, the record that has been brought before the Court of Appeals, the record upon which that Court entered its order on the writ of mandamus (Cause No. 8576) stands uncontradicted that the official court records concerning Petitioner's disbarment have been altered in an attempt to make it appear that two other United States District Judges joined with Judge Chandler on November 10, 1958, in signing the order of November 10, 1958. (Exhibit A attached to Petitioner's Application for Writ of Mandamus in Cause No. 8576).

Petitioner has already submitted sufficient factual data to entitle him to a hearing to prove that the purported order dated the 10th day of November, 1958, was not signed on the 10th day of November, 1958; was not filed on November 10, 1958; and amounts to a crude forgery of a combination of a stamped file mark but with the year "1958," hand-written in ink. Petitioner is entitled to a hearing to prove through sworn testimony such as that of Ted J. Davis, former Clerk of the United States Court for the Western District of Oklahoma, that as of March 2, 1959, no written order had been filed striking the name of O'Bryan from the roll of attorneys admitted to practice in the federal court for the Western District of Oklahoma. Petitioner is entitled to a hearing to prove that Judge Chandler, alone, made a minute order and an oral order of disbarrment, that no copy of the order was ever served upon O'Bryan, but instead the order was summarily entered without a hearing

and that O'Bryan first became aware of the existence of the back-dated order when he was informed by his Washington, D. C. counsel in February, 1961, of the existence of the order.

One of the bases of the District Court's order of dismissal without a hearing is that no timely appeal was taken from the purported order of November 10, 1958, or subsequent bankruptcy proceedings of September 25, 1959. *This assumes the major fact at issue in this entire matter, namely, that the purported order dated November 10, 1958, is authentic and was signed and entered as of that date.* Petitioner is entitled to a hearing to prove he had no knowledge of this order and that the order is fraudulent and void and therefore he has never had an opportunity to appeal. He should not lose his rights because "no timely appeal was taken." It was impossible for O'Bryan to appeal from the unknown, unentered order either after November 10, 1958, or after September 25, 1959, because the backdated order was not in existence until early 1961, and O'Bryan did not learn of it until February, 1961.

Finally, Petitioner calls attention to the detailed investigation of the United States Treasury Department of this entire matter. (Tr.(b)11) The Treasury Department Examiner has dismissed the charges against Petitioner because it found Judge Chandler's disbarment of Petitioner to be invalid.

CONCLUSION

The controlling law in these circumstances is *Theard v. United States*, 254 U.S. 278, 1 L. Ed. 1342, 77 S. Ct. 1274 (1957). In that case this Honorable Court established the basic, minimal rights of an accused attorney in these circumstances. These rights include the right to be charged and served with a copy of the charge, in order to prepare a defense; the right to present a defense; the right to be confronted by his accusers, and the basic right of cross examination, and the right to appeal.

Petitioner has not been afforded these basic rights. Instead he has been thwarted in all his attempts to secure them over the long years since November 10, 1958. For all the foregoing reasons this petition for writ of certiorari should be granted.

Respectully submitted,

REAGAN M. MARTIN,
700 United Fidelity Building,
1025 Elm Street,
Dallas, Texas,

HARVEY L. DAVIS,
3315 Daniels Street,
Dallas, Texas 75222,
Attorneys for Petitioner.

APPENDIX A

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

November, 1967, Term

Number 9563

W. H. PAT O'BRYAN,

Appellant,

v.

STEPHEN S. CHANDLER,

Appellee.

A brief recitation of the history of this controversy is essential to our disposition of the appeal.

The records in the office of the Clerk of the United States District Court for the Western District of Oklahoma show that in November, 1958, an order, signed by all of the active judges of that court, was entered barring appellant from practicing law in that court. In 1963, appellant came indirectly to this court asking for a writ of mandamus declaring the disbarment order void and compelling the striking of it from the records. The writ was denied because we thought petitioner had full relief available to him in the court where the order had been entered. O'Bryan thereafter attempted to pursue his remedy in that court but was confronted by delays of more than two years and then had not been afforded a hearing. In 1966, he again asked this court for mandamus relief in the matter of his disbarment. Pursuant to that request, this court, on October 11, 1966, by an order, denied any affirmative relief but disqualified respondent in

the matter and assigned all pending motions and other matters to the judge of the district next senior to the chief judge. Such next senior judge thereafter disqualified himself and the pending matters were taken over by a judge from another district.

No hearing was thereafter granted appellant but he was required to file what the court called a "Further Statement" and on the basis of this document and the files and records in the court pertaining to the pending matters the court entered an order stating, in part, "No useful purpose could be served in setting this matter for hearing" and dismissing appellant's application.

O'Bryan attacks the disbarment order on several grounds and in substance contends that he was denied the basic and minimal rights of an accused attorney under the circumstances reflected here, as such rights were enunciated in Theard v. United States, 354 U.S. 278. He also places reliance upon an alleged violation of the local court Rule 4(d) requiring that grievances against members of the bar of the court to be first submitted to a committee of the bar for investigation and recommendation. The very nature of appellant's contentions clearly shows he is entitled to a hearing. This, we thought, was inherent in our order of October 11, 1966, but it was not so interpreted.

The order appealed from is set aside and the matter is remanded with directions to afford appellant an evidentiary hearing on the merits of the controversy and thereafter for the court to make appropriate findings of fact and conclusions of law. We should expressly state that this order does not supersede this court's order of October 11, 1966, but is a supplement thereto.

APPENDIX B

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

No. 9563 — July Term — 1968

IN THE MATTER PERTAINING TO
W. H. "PAT" O'BRYAN

Appeal From The United States District Court
For The Western District Of Oklahoma

Before PICKETT, HILL and SETH, Circuit Judges

PER CURIAM

This matter arose out of a November 19, 1958 order of the Honorable Stephen S. Chandler, Chief Judge of the United States District Court for the Western District of Oklahoma, striking the name of W. H. "Pat" O'Bryan from the roster of attorneys authorized to practice before that court. The order followed a hearing on O'Bryan's claim for attorneys fees filed in a bankruptcy proceeding, which O'Bryan supported with a letter-contract purportedly signed by the bankrupt and found by the court to be false and fraudulent. Thereafter, upon the same charge, the Supreme Court of Oklahoma disbarred O'Bryan from the practice of law in Oklahoma courts. State v. O'Bryan, 385 P. 2d 876, cert. denied 376 U.S. 649. The facts are fully set forth in the opinion of the Oklahoma court.

On September 2, 1963, following denial by this court of relief in a mandamus action, O'Bryan filed a motion to vacate the disbarment order and expunge it from the court

records. No action was taken on the motion for more than two years, whereupon O'Bryan again sought mandamus relief in this court. Affirmative relief was denied, but Judge Chandler was disqualified from acting further in the matter, and all pending proceedings and other actions arising thereafter were directed to be assigned to another Judge. It fell to the lot of Judge Edwin Langley, Chief Judge of the Eastern District Court of Oklahoma, to put an end to the long drawn-out proceedings. The Judge made a careful study of the court records of all the cases involved in the disbarment matter and directed O'Bryan to file a statement in response to certain factual matters disclosed in the records of the various cases, all of which were fully set forth in the order. O'Bryan filed a response and thereafter, without further hearing, Judge Langley entered a final order overruling the motion to vacate the disbarment order. A motion to set aside this order and grant a formal hearing was overruled by order of April 12, 1967. A notice of appeal was not filed until June 8, 1967, the 57th day after the entry of the final order.

The record on appeal came to this court, and the only appearance was by O'Bryan. On December 29, 1967 we vacated Judge Langley's order because we thought it was inherent in our order of October 11,1966 that O'Bryan was entitled to a formal hearing under the rule of Theard v. United States, 354 U.S. 278. Thereafter Judge Chandler filed a document designated "Motion to Clarify." This motion was treated as a petition for rehearing and was set for oral argument. We granted the Oklahoma State Bar Association permission to appear amicas curiae for the purpose of filing a brief and presenting oral argument.

At the outset we are confronted with a jurisdictional question because the notice of appeal was not filed within 30 days after the entry of the order from which appeal was taken. It is the general rule, including that of this circuit, that a court of appeals acquires jurisdiction of a case appealed from a district court decision only upon the filing of a timely notice of appeal. Barron & Holtzoff, Ruled

Ed. § 1553; Cohen v. Plateau Natural Gas Co., 10 Cir., 303 F. 2d 273, cert. denied 371 U.S. 825; Wagoner v. Fairview Consolidated School Dist. No. 5, 10 Cir., 289 F. 2d 480, cert. denied 368 U.S. 921; Martin v. United States, 10 Cir., 263 F. 2d 516, cert. denied 365 U.S. 853; Stone v. Wyoming Supreme Court, 10 Cir., 236 F. 2d 275.

Rule 73(a), F. R. Civ. P., now Rule 4, F. R. Appellate P., provides that an appeal may be taken within 30 days after the entry of the judgment appealed from "except that in any action in which the United States or any officer or agent thereof is a party" the time shall be 60 days from such entry. It is urged that the United States is actually a party to these proceedings because they arose out of the action of a United States District Judge — but we think not. The signing of the order by Judge Langley overruling O'Bryan's motion to vacate was no different than the signing of a similar order in any other civil proceeding. It is true that Judge Chandler was a respondent in various mandamus actions, but these were actions independent of the disbarment proceeding and for the purpose of requiring the District Judge to act on a pending matter.

The exception to the basic 30-day limit for taking an appeal is clear and explicit. It applies only to those cases in which the United States or an officer or agent thereof is a party. The United States is allowed additional time to appeal because, in many instances, of the necessary delay by various governmental departments to determine whether an appeal should be taken.[1] The test as to the application of

[1] The notes of the Advisory Committee on Criminal Rules referring to the 60 day provision of Rule 73(a) state:

> "In cases where the United States or an officer or agency thereof is a party, allowance of sixty days to the government, its officers and agents is well justified. For example, in a tax case the Bureau of Internal Revenue must first consider and decide whether it thinks an appeal should be taken. This recommendation goes to the Assistant Attorney General in charge of the Tax Division in the Department of Justice, who must examine the case and make a recommendation. The file then goes to the Solicitor General, who must take the time to go through the papers and reach a conclusion.

Footnote continued on next page

the 60 day period is not whether the United States might be concerned or interested in the final judgment, but whether it is a party to the action in which the judgment is entered. United States v. American Soc. of Composers, Authors and Publishers, 2 Cir., 331 F. 2d 117, cert. denied 377 U.S. 997. Cf. Michaels v. Chappell, 9 Cir., 279 F. 2d 600, cert. denied 366 U.S. 940; Hare v. Hurwitz, 2 Cir., 248 F. 2d 458. The United States or any of its officers or agents did not appear in the disbarment proceedings, and so far as the record shows it had no right of appeal from the final decision. We are of the opinion that the signing of a final order by a Federal Judge overruling a motion to vacate an existing order of disbarment does not constitute that Judge a party to the action within the meaning of Rule 73(a), and an appeal from such order must be taken within 30 days from the entry thereof.

The December 29, 1967 per curiam order of this court is withdrawn and the appeal is dismissed for lack of jurisdiction.

Footnote continued from previous page

If these departments are rushed, the result will be that an appeal is taken merely to preserve the right, or without adequate consideration, and once taken it is likely to go forward, as it is easier to refrain from an appeal than to dismiss it. Since it would be unjust to allow the United States, its officers or agencies extra time and yet deny it to the other parties in the case, the rule gives all parties in the case 60 days." 28 U.S.C.A. Rule 73(a) P. 434.

APPENDIX C

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

Miscellaneous No. 7

IN THE MATTER PERTAINING TO W. H. "PAT" O'BRYAN

O R D E R

Now on this 28th day of March, 1967, there comes on for further consideration the motion of W. H. Pat O'Bryan to vacate and expunge from the record an order striking his name from the roll of attorneys authorized to practice law in this court. After considering the further statement of the movant filed pursuant to the order of this court entered on January 26, 1967, and after examining the pertinent records in the office of the clerk of this court, the court is of the opinion, and so finds, that the motion should be denied without a hearing.

From an examination of a transcript of the proceedings on November 3, 1958, in bankruptcy Case No. 10680, In the Matter of Selected Investments Corp., et al., it appears that evidence was offered by the trustee for the corporation tending to show that the movant herein, W. H. Pat O'Bryan, had undertaken to support a claim against the trustee by a false and fraudulent instrument, a letter; that when such evidence was offered the court at the request of W. H. Pat O'Bryan and his attorney continued the case for further hearing until November 10, 1958; and that at the hearing on November 3, 1958, the court clearly indicated to the movant and his counsel the seriousness with which he viewed the

evidence and cautioned the movant of the need to be prepared to offer evidence at the subsequent hearing to disprove the apparent misconduct.

From a statement by the judge handling the matter, Stephen S. Chandler, referred to in the previous order of this court, it appears that the movant's attorney was clearly advised on November 7, 1958, that unless evidence was offered at the hearing set for November 10, 1958, to disprove the fabrication the movant would be disbarred from practice in this court. Although afforded an opportunity to deny this statement, the movant has failed to do so and the statement will therefore be taken as establishing as a fact that prior to the hearing on November 10, 1958, the movant had been fully advised as to the purpose of the hearing and of the possible consequences to him.

From an examination of a transcript of the proceedings on November 10, 1958, it appears that the movant was present and represented by counsel, that he was fully advised again of the consequences if he should fail to offer testimony to disprove the evidence introduced at the hearing on November 3, 1958, respecting the filing of a false and fabricated document, and that no such evidence was offered at the hearing by the movant.

It further appears from an examination of the record of the proceedings on November 10, 1958, an examination of the docket entries for that date, the daily blotter of the court clerk, the special docket for attorneys' admissions and grievances, disbarments, etc., and an examination of the files in the office of the clerk of this court, *that on November 10, 1958, an order was entered, signed by all of the judges of this court at the time, striking the name of the movant from the roll of attorneys of this court, and that appropriate entries were made on the various pertinent dockets. And it further appears that no appeal was taken by the movant from this order.*

From a further examination of the records of the clerk of this court it appears that on September 2, 1959, an appli-

cation was filed by the movant for permission to file a motion for reconsideration of his claim against the trustee for Selected Investments *and to vacate the order entered November 10, 1958*, and restore the movant's name to the list of attorneys entitled to practice before this court; that a hearing on the application was held on September 25, 1959, at which time the application was denied; and that an appeal from this order was denied on December 2, 1959, as not timely filed.

The court finds, therefore, that the order of November 10, 1958, striking the movant's name from the list of attorneys authorized to practice before this court was entered after the movant had been given notice of the charge against him and had been afforded an opportunity to prepare and present a defense; that on September 25, 1959, the court denied an application of the movant to vacate the order and restore his name to the roll of attorneys; that no timely appeal was taken from either order; and that the movant is not entitled to a reconsideration of said orders in this proceedings. The court further finds that since said orders have become final and may not be set aside, no useful purpose could be served in setting this matter for hearing.

IT IS THEREFORE BY THE COURT ORDERED that the motion or application of W. H. Pat O'Bryan to vacate the order of this court entered November 10, 1958, and restore his name to the list of attorneys authorized to practice before this court be and the same hereby is overruled and denied, and this action is dismissed.

/s/ EDWIN LANGLEY

District Judge

APPENDIX D

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

Miscellaneous No. 7

IN THE MATTER PERTAINING TO W. H. "PAT" O'BRYAN

ORDER FOR FURTHER STATEMENT

There now comes before the court for consideration the motion of W. H. Pat O'Bryan to vacate and expunge from the record an order barring him from the practice of law in this court. The order complained of is shown of record as entered November 10, 1958.

As grounds, the movant alleges that the order was entered summarily, in violation of the rules of the court and without due process of law. The pertinent specific acts or omissions relied on are as follows:

1. The grievance on account of which he was disbarred was not referred to the grievance committee of the court for investigation and recommendation as required by the court rules.

2. He was not presented with a statement of the charges against him.

3. The order was entered without affording him an opportunity to be heard.

4. The order was not served upon him.

5. No order was issued from which an appeal could be taken.

6. He was not afforded an appeal.

In a document entitled "Official Statement of Judge Chandler" filed with the United States Court of Appeals, Tenth Circuit, in Case No. 7907, W. H. Pat O'Bryan v. Stephen S. Chandler, statements are made to the effect that:

1. The misconduct for which the movant was disbarred was the fabrication of a fraudulent claim against the trustee in the corporate reorganization of Selected Investments Company under Chapter X of the Bankruptcy Act.

2. At a hearing on November 3, 1958, held pursuant to notice and with movant's attorney present, evidence was presented by the trustee in the Selected Investments case indicating the movant had submitted to him a false claim. The hearing was then continued until November 10, 1958, to give the movant an opportunity to be heard in the matter and to present evidence.

3. On November 7, 1958, movant's attorney was advised by the court that unless the movant offered evidence at the hearing on November 10th to disprove the fabrication, the claim would be denied and the movant would be disbarred.

4. At the hearing on November 10, 1958, with the movant present in person and by his attorney, no evidence was offered by the movant to disprove the falseness of his claim, although advised by the court of the consequences of not doing so, and the court entered an order disallowing the claim and disbarring the movant from the further practice of law in this court.

5. No appeal was taken from the action of the court.

6. On September 2, 1959, the movant filed an application, apparently in the Chapter X proceeding, for reconsideration of the claim and reinstatement as a member of the bar of this court. On September 25, 1959, after notice, a hearing was held on the application at

which evidence was offered by the movant. At the conclusion of the hearing, the court denied the application and refused to reinstate the movant as a member of the bar of this court. An appeal was taken from this order by the movant, which was dismissed by the Court of Appeals on December 4, 1959.

The court is of the opinion, and so holds, that the act of misconduct of which the movant was accused, if true, was sufficient to justify his disbarment. The court is of the further opinion that in the circumstances of this case reference of the matter to a grievance committee was not a prerequisite to the entry of a valid order of disbarment. Assuming misconduct warranting disbarment if established, what is required for a sufficient proceeding to sustain the action of a court in disbarring an attorney is notice to the attorney of the charges against him and an opportunity to prepare and present a defense. If the description of events set out above fairly represents the proceedings leading to and resulting in the disbarment of the movant from the practice of law in this court, his motion, in the opinion of this court, should be denied. Further, if an order was made in open court disbarring the movant with him then present, as hereinabove described, and no appeal was taken, the movant should not now be heard to complain against the validity of the order. He could have appealed, in the opinion of the court. And finally, if it is true that on September 25, 1959, upon application and notice and after the movant was afforded a hearing, the order of disbarment was continued in effect, and either that an appeal was taken and denied or no appeal was taken, the movant should not again be heard to question the validity of the order.

In either event, that is, if the initial proceedings were sufficient or if they were defective but were corrected by affording an adequate opportunity to prepare and present a defense after notice of the grounds of disbarment, the only recourse the movant has is to apply for reinstatement as a member of the bar of this court — which he has not done by his motion in this proceeding.

Accordingly, for the purpose of enabling the court to determine the nature and extent of the hearing that should be held in this matter, if any,

IT IS ORDERED that within 10 days from the date of this order the movant shall file in this proceeding a plain and simple statement, without argument, pointing out which of the above statements taken from the "Official Statement of Judge Chandler" he considers to be inaccurate, if any, and setting out his own version of the pertinent events.

Dated this 25th day of January, 1967.

/s/ EDWIN LANGLEY

District Judge

In the
Supreme Court of the United States

OCTOBER TERM, 1968

No. 1011

W. H. PAT O'BRYAN,
Petitioner,

VERSUS

STEPHEN S. CHANDLER, Chief Judge of the United States District Court for the Western District of Oklahoma,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

BRIEF FOR RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinion of Honorable Edwin Langley of the District Court is not reported. It is entitled "Order" and is set out as Appendix C to the Petition. It contains the findings of the District Court, the order overruling Petitioner's Motion to vacate the order disbarring him and the order dismissing the action.

The opinion of the Court of Appeals which Petitioner seeks to have reviewed here is entitled *In the Matter Pertaining to W. H. Pat O'Bryan,* Number 9563. It is reported in 399 F.2d 916 and is set out as Appendix B to the Petition. The Petition is incorrectly entitled in this Court *O'Bryan* v. *Chandler, Chief Judge.*

JURISDICTION

The jurisdictional requisites are adequately set forth in the Petition.

QUESTION PRESENTED

Whether the notice of appeal was filed within the time required by law so as to vest the Court of Appeals with jurisdiction to review the Order and Judgment of the District Court.

The other questions presented by Petitioner are frivolous and do not warrant discussion.

STATUTE INVOLVED

The pertinent provisions of law are 28 U.S.C. 2107 and Federal Rules of Appellate Procedure, Rule 4.

STATEMENT

The Judgment of the Court of Appeals, review of which is sought here, was titled in that Court *In the Matter Pertaining to W. H. Pat O'Bryan,* Number 9563. Petitioner has incorrectly and improperly entitled his Petition for Writ of Certiorari in this Court as *W. H. Pat O'Bryan* v. *Stephen S. Chandler, Chief Judge of the United States District Court for the Western District of Oklahoma.*

Respondent, Judge Chandler, was not a party to the action in the District Court nor in the Court of Appeals. However, since he is improperly designated by Petitioner as the Respondent and is the only person served with notice of the filing of the Petition for Writ of Certiorari, it is considered incumbent on him, in the interest of justice, to oppose the Petition.

Petitioner does not deny that no notice of appeal was given within thirty days as required by 28 U.S.C. 2107 and Federal Rules of Appellate Procedure, Rule 4. Counsel fatuously argue that such jurisdictional requirement should not apply to Petitioner.

Judge Langley, the trial judge, in his Order, Appendix C, page 2, found from an examination of the records of the court that Petitioner was disbarred in 1958 at a properly noticed hearing by order signed by all of the judges of the court, that appropriate entries were made on the various pertinent dockets and that no appeal was taken by Petitioner from this order.

Judge Langley also found that in 1959 the court denied an application of Petitioner to vacate the order of disbarment and restore his name to the roll of attorneys; that an appeal was taken from this order which was dismissed by the Court of Appeals because the Notice of Appeal was not timely filed. *O'Bryan, O'Bryan & O'Bryan* v. *Harrison, Trustee,* 274 F.2d 831 (C.A. 10, 1959).

ARGUMENT

From the foregoing it is clear that the disbarment Judgment is *res judicata* both by reason of the failure to appeal from the original Order of disbarment in 1958 and the dismissal of Petitioner's untimely appeal from the 1959 Order denying his Motion for reconsideration and vacation of the Order of disbarment.

It seems proper, under the circumstances, to also call to the attention of the Court that Petitioner requested and was granted a separate open trial before The Oklahoma

Bar Association upon the same charges and that upon the record so made the Supreme Court of Oklahoma disbarred him by Opinion reported as *State of Oklahoma ex rel. Oklahoma Bar Association* v. *O'Bryan,* 385 P.2d 876, *cert. denied* 376 U.S. 649, 11 L.Ed.2d 980, 84 S.Ct. 983. In the opinion the Supreme Court of Oklahoma stated, at page 890:

> "We conclude that the evidence in this case is sufficient to overcome the presumption that respondent is innocent and to establish to a reasonable certainty that the charge against him is true."

It thus appears from the record before this Court that not only was Petitioner's Notice of Appeal to the Court of Appeals untimely, but that the matter sought to be relitigated in the District Court was *res judicata* by final judgments of the highest Federal and State Courts.

The decision of the Court of Appeals which Petitioner sets out as Appendix A to his Petition entitled *O'Bryan* v. *Stephen S. Chandler,* in his individual capacity, Number 9563, was *improperly titled* and *erroneously entered* by that court, the error having been induced by counsel for Petitioner who misled the court as to the facts. No counsel appeared in opposition to call the improper presentation to the attention of the court.

When Judge Chandler called the error to the attention of the court and the Oklahoma Bar Association appeared *amicus curiae* and presented the true facts, the opinion was withdrawn and the court entered the judgment, Appendix B to the Petition, *properly titled* and *numbered,* dismissing the untimely appeal.

This Brief in Opposition to the Petition is filed to prevent this Court from being similarly misled by the improper designation of the case here and the confusing, burdensome, irrelevant, immaterial and scandalous matter which counsel for Petitioner have set out in the Petition in direct violation of Rule 40.

There are other excellent reasons for opposing the Petition. If the Court should be inclined to seriously consider the Petition, the matter should be called to the attention of the Oklahoma State Bar so that counsel who appeared and presented the matter in the Court of Appeals may oppose it.

However, Respondent believes that it will be clear to the Court that the decision below is correct, that there is no conflict of decisions involved and that there is no important question of Federal Law to be settled.

CONCLUSION

For the foregoing reasons, it is submitted that the Petition should be denied.

Respectfully submitted,

CARL L. SHIPLEY
1204 National Press Building
Washington, D. C. 20004

Counsel for Respondent

of Counsel:

SHIPLEY, ACKERMAN & PICKETT

February 24, 1969